

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2759 of 2005

Shri Shivaram Arjuna Bhoite and Ors..Petitioenrs

V/s

Shri Vihnu Arjuna Bhoite

deceased by heirs:

1A Bhikaji Vishnu Bhoite and Ors..Respondents

Shri V.B.Rajure for Petitioner

Shri H.S.Venegavkar for Respondent nos.1A and 1B

CORAM:S.R.SATHE, J.

DATED:16th Feb. 2006

P.C.:-

1. Heard finally at the stage of admission.
2. As defendant's application for additional written statement was rejected, he has filed the present petition. From the perusal of the order passed by the learned trial Judge it is very clear that during the pendency of the suit plaintiff amended the plaint and as a result of the same it became necessary for the defendants to file additional written statement. However, as the same was not filed by the defendant

within a period of one month his application for filing written statement was rejected having regard to the provisions of Order 8 Rule 1 of Code of Civil Procedure. It is pertinent to note that now it is well settled that in a fit and proper case the Court has discretion to allow filing of written statement even if the same is not filed within the period of one month. In the instant case there is delay of 16 days. It was not a case where the defendant had deliberately avoided to file written statement or by virtue of additional written statement he was trying to introduce any new case. It is only because the plaint was amended it became necessary for the defendant to file the written statement.

3. So, under these circumstances the order passed by the learned trial Judge rejecting the application for filing written statement cannot be said to be legal and proper. Hence the petition is allowed. The defendant is directed to file additional written statement in the trial Court within 3 weeks from today.

(S.R.SATHE, J.)